

07.03.2024
Sl. No.16(DL)
srm

C.O. No. 2655 of 2023

Smt. Saroj Devi Singh @ Smt. Saroj Devi & Ors.

Versus

Ramasankar Gupta @ Shaw & Ors.

Mr. Rwitendra Banerjee,
Mr. Sandeep Kumar Tiwari,
Mr. Gautam Das

...for the Petitioners.

1. By the order dated March 29, 2022 passed by the learned Civil Judge (Junior Division), 4th Court at Howrah, the learned court allowed the OPW1 to file a supplementary affidavit-in-chief in Misc. Case No.23 of 2007.
2. The learned court was of the view that although an affidavit-in-chief had been filed, certain details with regard to the documents, which the said OPW1 wanted to tender in evidence, had not been mentioned in the same. Accordingly, supplementary affidavit-in-chief was allowed to be filed in aid of the main affidavit-in-chief. The court found that the supplementary affidavit-in-chief could be tendered and technicalities would not come in the way. Accordingly, the application under Section 151 of the

Code of Civil Procedure was allowed. The court fixed a date for filing and tendering of the additional affidavit-in-chief by the OPW1 and, thereafter, cross-examination of the OPW1.

3. Mr. Banerjee, learned Advocate appearing on behalf of the petitioners submits that a supplementary or an additional evidence to the already existing evidence on record could not be filed, unless the said evidence was either recalled or revoked or taken back.
4. In my opinion, such is not the provision of law. Even if Order XVIII Rule 17 of the Code of Civil Procedure does not provide that additional affidavit-in-chief can be filed, the court in exercise of its inherent power under Section 151 of the Code of Civil Procedure can always allow supplementary affidavit-in-chief to be filed for the ends of justice under exceptional cases.
5. In this case, the court found that explanations with regard to the documents sought to be tendered were missing in the affidavit-in-chief and such explanation and elaboration had been provided in the supplementary affidavit-in-chief or the additional affidavit-in-chief. Not allowing such supplementary affidavit-in-chief would amount to miscarriage of

justice. The court has exercised its inherent power and discretion.

6. This Court does not find any reason to interfere with the order impugned. This is not a case that by filing a supplementary affidavit-in-chief the opposite parties were trying to fill up any lacuna.
7. It is an admitted position that the deposition of the petitioners had not begun at the relevant point of time. It also appears that right of cross-examination was granted.
8. The revisional application is disposed of without interfering with the order impugned.
9. There shall be no order as to costs.
10. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)